

REMARKS

The Applicant requests the Examiner consider the following remarks upon further review of the current application.

Claim Amendments

Claims 1, 2, 45, 56, 63 and 74 are amended to replace the limitation of “break [or breaking] the shear member” with “separate [or separating] the shear member from the connector clip.”

Rejections Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 2, 22-26, 35-38, 45-49, 55, 56, 60-67, 73, 74, and 78-80 under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 4,624,155 to Wing (hereinafter “Wing”). The Applicant respectfully disagrees with this rejection for at least the following reasons.

1. Claim 1

With respect to claim 1, the Examiner alleged the “shear member” of claim 1 is anticipated by the combination of Wing’s “stiffly bendable elongated rod 40” and clip 45. The Examiner further alleged the combination of rod and clip would inherently fail and break under a shear failure force created by tension applied to a front cable strand 23 and a rear cable strand 14. (All reference numerals refer to elements disclosed in Wing.) Briefly, the Examiner stated that “[t]he shear member 40, 45 is inherently broken if sufficient shear failure force is applied to it.”

In the latest Office action response, dated December 18, 2003, the Applicant respectfully asserted that sufficient shear failure force to break either the rod 40 or clip 45 of Wing cannot be generated. Applying tension to the front and rear cable strands 23, 14 will cause the rod to move along a deflector means, not break. As Wing states, “[p]ulling on the linkage with a force yet to

be described will cause the rod to move along its axis on [a bent path defined by the deflector means]" (col. 2, lines 54-56).

In other words, and as set out in the Applicant's prior response, as tension is applied to Wing's front and rear cables, the rod moves along a bent path to relieve the tension. Further, as shown in Fig. 3, the end of the rod 44 does not include any means for retaining the rod within the aforementioned bent path. Instead, if sufficient tension is applied to the cables, the rod will simply slip all the way along its axis and completely disengage from the deflector means. There is no breaking of either the rod 40 or clip 45 during operation. Prior to reaching any force sufficient to break either element, the force will disconnect the rod and clip from the linkage tensioner 25 (and associated deflector means). Since neither the rod nor the clip will break prior to disengaging the rod and clip from the deflector means, these elements cannot anticipate the "shear member" of claim 1. Accordingly, Wing is not a proper reference under § 102(b) against the invention of claim 1.

In response, the Examiner stated in the final Office action that "[s]ince Wing's clip 45 or rod 40 is deformed [upon the application of tension], eventually, the clip 45 or rod 40 will be broken or cracked when the tension force applies a pressure on the clip 45 or rod 40 such that said pressure is greater than the yield strength of the material of which the clip 45 or rod 40 is made." However, neither the clip 45 nor rod 40 break or crack when a tension force is applied to the clip 45 or rod 40, as the apparatus is designed "to pull the rod through the body so long as the tensile force exceeds the datum force." (Col 3, lines 32-33.) Under the configuration disclosed in Wing, applying a tensile force greater than the yield strength of the clip 45 or rod 40 is not possible; otherwise, the clip 45 and rod 40 would not be able to maintain the datum force desired to maintain sufficient tension in the cables 14, 15 and 23. (See col. 3, lines 27-41.) Accordingly, no mention of breaking or cracking is made in Wing, as the apparatus would cease to function as it was intended.

In the final Office action, the Examiner chose to interpret the term "break" according to Definition 2 set forth in Webster's II New Riverside University Dictionary (1994) ("to crack without separating into pieces"). Further, the Examiner states that any microscopic cracks that

may appear in Wing's clip 45 or rod 40 as a result of the rod slipping though the body 26 would qualify as a "break" while still maintaining a continuous connection from the brake actuation lever 20 to the brake assembly 11, 12.

The Applicant notes the Examiner's use of Definition 2 and refusal to assert Definition 1. As listed in the particular Webster's dictionary employed, Definition 1 (which arguably is more widely accepted and recognized due to its position as the first-listed definition for the term "break") defines "break" as "*to cause to come apart into pieces suddenly or violently*" (emphasis supplied). By the Examiner's refusal to apply this definition to the claims when setting forth the § 102 rejection, the Applicant presumes the Examiner believes this definition does not apply to the apparatus disclosed in Wing. Accordingly, the Applicant presumes the Examiner agrees Wing does not teach a shear member coming apart or separating.

In order to advance the claims of the present application toward prompt allowance, claim 1 has been amended to indicate that sufficient tension will "cause the second end of the front cable strand to separate the shear member from the connector clip...." Claim 2 has been amended in a corresponding manner so that it properly refers to claim 1. The Applicant believes that these amendments address the concerns of the Examiner regarding the definition of the word "break," as Wing does not teach any brake assembly member separating as claimed.

Additionally, the Applicant respectfully contends that defining a break as a microscopic crack is not appropriate within the art of cable tensioning systems. More specifically, the existence of a microscopic crack in the clip 45 or rod 40, without more, neither positively nor negatively affects the operation of the Wing apparatus. In other words, a portion of such a device that "breaks" in such a manner does not alter the operation of a cable tensioning system. Therefore, a definition of the term "break" that encompasses a microscopic crack has no meaning in relation to the subject matter of claim 1, and thus would not represent a customary and ordinary definition of the term in the environment described in the present application.

The Examiner also asserted that in the Applicant's previous Office action response, the Applicant "admit[ted] that there is a possibility that the clip 45 or rod 40 somehow can be broken during operation of Wing's invention." The Applicant respectfully disagrees with that assertion.

The Applicant was merely posing a hypothetical situation, as evidenced by the words “even if,” to address the inability of the Wing device to maintain a continuous connection from the brake actuation lever 20 to the brake assembly 11, 12 in the event the rod 40 were no longer held by the body 26. Also, such an admission would be inconsistent with the Applicant’s position that the configuration disclosed in Wing does not allow the clip 45 or rod 40 to be broken, as discussed earlier. Hence, the Applicant did not admit that the Wing clip 45 or rod 40 could break.

Accordingly, for at least these reasons, the Applicant contends that claim 1, as amended, is not anticipated by Wing, and withdrawal of the rejection is respectfully requested.

Further, in spite of the amendment of independent claim 1, the Applicant respectfully maintains that the subject matter of original claim 1 is allowable based on the arguments set forth in his prior response, and thus reserves the right to resubmit the language of the original claim in a continuing application.

2. Claims 45 and 63

With respect to claims 45 and 63, the Examiner has indicated in the final Office action that a microscopic crack (if one actually may actually be found on the clip 45 or rod 40) qualifies as a break, thus allowing the Wing device to maintain a continuous connection as described above. However, as discussed above, a break (according to the normal usage of the term appropriate for a cable tensioning system) would defeat the ability of the Wing apparatus to maintain such a connection. Thus, the Applicant contends that claims 45 and 63, in their original form, are not anticipated by Wing.

Further, claims 45 and 63 have been amended in a fashion similar to claim 1 to facilitate prompt allowance of these claims. More specifically, amended claims 45 and 63 require a shear member separating from the connector clip under tension of a sufficient magnitude. Similarly, dependent claims 56 and 74 have been amended in a corresponding manner so that they properly refer to independent claims 45 and 63, respectively. The Applicant believes that these amendments effectively address the Examiner’s concerns regarding the definition of the term

“break.” Specifically, Wing does not teach any shear member separating under tension, as required by claims 45 and 63.

Thus, for at least this reason, the Applicant respectfully submits Wing does not anticipate the invention of amended independent claims 45 and 63. Accordingly, the Applicant respectfully requests the Examiner withdraw his rejections and allow the independent claims.

Further, in spite of the amendments of claims 45 and 63, the Applicant respectfully maintains that the subject matter of original claims 45 and 63 is allowable based on the arguments presented above, and thus reserves the right to resubmit the subject matter of those claims in a continuing application.

3. Claims 2, 22-26, 35-38, 46-49, 55, 60-62, 64-67, 73, 74, and 78-80

Claims 2, 22-26, 35-38, 46-49, 55, 60-62, 64-67, 73, 74, and 78-80 each depend from a patentably distinct independent claim, namely one of claims 1, 43, and 65. Accordingly, these claims are also patentable. The Applicant makes this statement without reference to or surrender of the additional bases of patentability within these claims. Thus, the Applicant respectfully requests the Examiner withdraw his rejections and allow the dependent claims.

Conclusion

Please charge Deposit Account No. 04-1415 the amount of \$110.00 for the fees for the amendment and a one-month extension of time, thereby extending the due date for this response from June 24, 2004, to July 24, 2004. Should any additional filing fees associated with this amendment be necessary, please consider this a request therefor and charge Deposit Account No. 04-1415 as necessary.

The Applicant thanks the Examiner for his thorough review of the claims in this application. Further, the Applicant submits that the application is now in condition for allowance, and respectfully requests such indication. In the event the Examiner has questions or comments and a telephone conversation would expedite a resolution, the Applicant invites the Examiner to contact the undersigned attorney at (303) 629-3400.

Appl. No.09/441,628
Amdt. dated July 26, 2004
Reply to Office action of March 24, 2004
Attorney Docket No. 1037/US/2
Express Mail Label No. EV 447 214 985 US

The Applicant respectfully requests a timely Notice of Allowance be issued in this case.

Dated this 26th day of July, 2004

Respectfully submitted:



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KJW/sd
cc: IP Docketing